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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,463	12/17/2003	Ernst-Wilhelm Schubert	71128	9591

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EXAMINER

KOHARSKI, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3763

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/738,463

Applicant(s)

SCHUBERT ET AL.

Examiner

Christopher D. Koharski

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/17/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement (IDS) that was submitted on 12/17/2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bischof, et al. (4,915,688). Bischof et al. discloses an apparatus for administering a solution to a patient.

Regarding claims 1-3 and 6-8, Bischof et al. discloses a coupling means (10) for series connection of adjacent modules, a fluid interface (34) connectable to a supply line (46) leading to a patient, a cartridge (22, 24, 26, 28) for receiving a medical active ingredient, and a delivery micro pump (20, 44, 38) means for delivering the medical active ingredient to said fluid interface (Figure 1). Bischof et al. discloses several modules with upper and lower parts that accommodate the cartridge said delivery means and the coupling means (Figure 1).

Claim Rejections - 35 USC § 102

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Santini, Jr. et al. (6,491,666). Santini, Jr. et al. discloses a micro fabricated device for the delivery of molecules into a carrier fluid.

Regarding claims 1-11, Santini, Jr. et al. discloses a dispensing device with a coupling means (156) for series connection of adjacent modules, a fluid interface with a connectable supply line to a patient, a cartridge (152) for receiving the medical agent, and a delivery means (158) for delivering the medical active ingredient from said cartridge to said fluid interface (Figures 1-8C, col 2). A controller (154) which stores and process coded disposable cartridges for possible drug interactions (col 14, ln 30-65) interfaced with the unit.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12-13 are rejected under 35 U.S.C 103(a) as being unpatentable over Santini, Jr. et al. or Bischof et al. in view of Vilks (6,077,055). Santini, Jr. et al. or Bischof meets the claim limitations as described above except for the coupler including pins for data coupling.

However, Vilks teaches pump system including a caste sensor and occlusion sensor.

Regarding claims 12-13, Vilks teaches a cassette infusion system that uses conductive projections to identify and coded cartridges for identification means drug usage (cols 5-6).

At the time of the invention, it would have been obvious to pump sensor system of Vilks to the system of Bischof et al. to incorporate an electronic safety control mechanism and the pin system to the Santini, Jr. et al. to allow for a reliable data connection between the cassette and the controller. The references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Vilks.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on 7:30am to 4:00pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date:

2/10/07


Christopher D. Koharski
AU 3763

